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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,368	11/03/2003	Joseph M. Pastore	279.632US1	5953
21186	7590	07/12/2006	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.			FAULCON JR, LENWOOD	
P.O. BOX 2938			ART UNIT	PAPER NUMBER
MINNEAPOLIS, MN 55402			3762	

DATE MAILED: 07/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/700,368	Applicant(s) PASTORE ET AL.	
	Examiner Lenwood Faulcon, Jr.	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/27/04 & 5/20/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 4, 5, 7, 8 rejected under 35 U.S.C. 102(e) as being anticipated by Adams et al. (U.S. 2003/0229380).

In regards to claim 1, Adams et al. teaches of an implantable device for delivering cardiac function therapy to a patient with multiple electrodes (see for example paragraphs 2, 9 and 12), in which includes and an embodiment comprising a biventricular pacing system (see for example paragraph 55), which is interpreted by Examiner to inherently include multiple pacing channels since the system comprises pacing at multiple sites. Adams et al. also discloses that the device comprises a parasympathetic stimulation system (see for example paragraph 11), which Examiner interprets as including a parasympathetic stimulation channel. Further, Adams et al. teaches of a controller for controlling the delivery of pacing pulses to pacing sites (see for example paragraph 10), in which the controller can deliver pacing therapy in conjunction with parasympathetic stimulation (see for example paragraph 11), which Examiner interprets to inherently have the capability of reducing ventricular wall stress.

In regards to claim 2, Adams et al. teaches of a sensor for measuring cardiac output (see for example paragraphs 10 and 92), wherein the controller is programmed to modulate the delivery of parasympathetic stimulation in accordance with the measured output (see for example paragraphs 11, 42 and 46).

In regards to claim 4, Adams et al. teaches of slowing the heart rate of a patient by parasympathetic stimulation (see for example paragraphs 38 and 39).

In regards to claims 5, 7 and 8, Adams et al. teaches of monitoring a patient's blood pressure, and the use of an activity sensor for monitoring a patient's exertion level (see for example paragraphs 46, 55 and 64).

Claim 11 presents similar limitations as to claim 1, and is thus rejected for similar reasons.

Claim 12 presents similar limitations as to claim 2, and is thus rejected for similar reasons.

Claim 14 presents similar limitations as to claim 4, and is thus rejected for similar reasons.

Claims 15, 17 and 18 present similar limitations as to claims 5, 7 and 8, and thus are rejected for similar reasons.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 6, 9, 10 rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al. (U.S. 2003/0229380).

In regards to claim 3, although Adams et al. teaches of the use of a sensor/circuit for measuring impedance to detect cardiac output (see for example paragraph 46), Adams et al. does not specifically teach of the use a trans-thoracic impedance measuring sensor/circuit. Examiner takes the position that it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the system as taught by Adams et al. to include a trans-thoracic impedance to measure cardiac output, since this type of impedance sensor/circuit is well known in the art as a efficient and effective detector of cardiac output.

In regards to claim 6, Adams et al. teaches of the system providing parasympathetic stimulation when the activity level is below a particular value (see for example paragraph 46). Although Adams et al. does not specifically state that parasympathetic stimulation only when the measured activity level is below a particular value, Examiner takes the position that such a requirement would have been an obvious modification to one having ordinary skill in the art at the time of the invention since Adams et al. teaches that it is desirable to induce parasympathetic stimulation to reduce a patient's heart rate (see for example paragraph 11) when the activity level is stabilized (see for example paragraph 46), in order to provide effective and efficient parasympathetic stimulation.

In regards to claims 9, 10, (see for example paragraphs 46 and 92), Adams et al. does not specifically state the use of a minute ventilation sensor or an accelerometer,

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for an exertion level sensor; however, Adams et al. does teach that the activity sensor can be one of a multiple types of exertion/metabolic level sensors (see for example paragraph 64). Thus, Examiner takes the position that it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the system as taught by Adams et al. to include a minute ventilation sensor or accelerometer, since these are commonly known activity/exertion sensors that can be used to efficiently and effectively measure a patient's metabolic demand.

Claim 13 presents similar limitations as to claim 3, and is thus rejected for similar reasons.

Claim 16 presents similar limitations as to claim 6, and is thus rejected for similar reasons.

Claims 19 and 20 present similar limitations as to claims 5, 7 and 8, and thus are rejected for similar reasons.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Obel et al. (U.S. Patent No. 5,199,428), Schwartz (U.S. Patent No. 5,330,507), Sweeney et al. (U.S. Patent No. 6,272,377), Zhou et al. (U.S. Patent No. 6,922,585), Cho et al. (U.S. Patent No. 7,025,730), Sweeney et al. (U.S. 2002/0016550), Yoshihito (U.S. 2004/0172074), Shafer et al. (U.S. 2004/0172075).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lenwood Faulcon, Jr. whose telephone number is 571-

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272-6090. The examiner can normally be reached on Monday-Thursday from 9 to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes, can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lenwood Faulcon, Jr.



George Manuel

Primary Examiner